

The Church of Rome and Marriage.

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By
D. Hay Fleming, LL.D.

THIRD EDITION

WITH AN AUTHORISED TRANSLATION OF THE
NE TEMERE DECREE.

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AN ARROGANT CLAIM.

“Many Protestants may think the Church presumptuous in decreeing their marriages valid or invalid accordingly as they have or have not complied with certain conditions. As the Church cannot err, neither can she be presumptuous. She alone is judge of the extent of her power. *Any one validly baptized, either in the Church or among heretics, becomes thereby a subject of the Roman Catholic Church.*”

See page 20.

THE CHURCH OF ROME AND MARRIAGE

IT is frequently said that the Church of Rome boasts of being always the same. Her marriage laws, so far from being always the same, have undergone serious changes, and are still complicated, capricious, inconsistent, and absurd. Before the year 1215, the marriage of those who were related to one another in the seventh degree of consanguinity or affinity was forbidden. Thus, the consanguinity bar prohibited the marriage of any man and woman who happened to be descended from the same great-great-great-great-great-grandfather, or from the same great-great-great-great-great-grandmother; and affinity, which was produced by illicit intercourse as well as by previous marriage, reached as far. A marriage within these degrees was deemed not only irregular, but null and void, unless a dispensation were obtained. It was because the evils which flowed from this preposterous extension of the Levitical prohibitions of inter-marriage were so enormous that the Lateran Council, in 1215, abolished those beyond the fourth degree.

As thus amended, canon law continued to forbid, under the pain of nullity, the marriage of third cousins, that is, of persons descended from the same great-great-grandfather, or from the same great-great-grandmother. A man or a woman may have had eight great-great-grandfathers, and as many great-great-grandmothers; and few people, probably

not one in a hundred, can tell the names of such distant ancestors; and fewer still can tell the names of all the descendants in the same generation as themselves. Nevertheless if descendants of common ancestors intermarried in the fourth generation, though in all innocence and good faith and in face of the church, the marriage was null and void. And so was a marriage between any two persons as distantly related by affinity, whether that affinity was caused by previous marriage or by illicit intercourse. Among the other nullifying bars (or diriment impediments, as canonists call them) set up by canon law were public decorum, spiritual consanguinity, and spiritual affinity, the two latter being produced by baptism and confirmation. Public decorum (*publica honestas*) debarred those who had been merely betrothed from marrying any related within the fourth degree of kindred to those to whom they had been betrothed. In cases of pressing emergency, laymen and women were enjoined to administer the rite of baptism. The baptiser could not marry the baptised, nor could the baptiser's children. A god-parent could neither marry his or her god-child, nor an actual parent of that child. The same restrictions were produced by confirmation. Such was spiritual consanguinity; and its logical excrescence, spiritual affinity, nullified marriage between the widow or widower of the god-parent and the person baptised or confirmed, and between the widow or widower of the god-parent and either of the actual parents of the person baptised or confirmed.

These restrictions were not theoretical propositions but were enforced in the ecclesiastical courts. Without going beyond Scotland many astounding illustrations might be given. Two may suffice. In August 1514, less than a year after King James IV. was killed at Flodden, his widow married Archibald, sixth Earl of Angus, and of this marriage Darnley's mother was born. The royal widow soon tired of Angus, and eventually got him divorced, on the ground of

a pre-contract into which he had entered with a sister of the second Earl of Bothwell. The royal widow then married Henry Stewart (afterwards Lord Methven); and, tiring of him, obtained a sentence of nullity in her favour, on the ground that he was related to her in the fourth and fourth degrees of affinity, in consequence of his being related to Angus in those degrees of consanguinity. James V., probably to save his mother from such a scandal, would not allow this sentence to be pronounced. Marjory Forret, daughter of the Laird of Fingask, divorced her husband, David Inglis, because her father had been his god-father. The ecclesiastical judge, in pronouncing sentence, on the 20th of February 1548-9, declared that, "while an impediment of spiritual relationship of this kind" stood between the said Marjory and David, their marriage was null and void, and therefore, he divorced them from each other, "giving to each the power of marrying elsewhere in the Lord." This judgment was as unimpeachable, according to canon law, as if they had actually been brother and sister. David's moral character may have been spotless; but if it had not, and though Marjory had been able to prove the grossest unfaithfulness on his part, the marriage would not on that account have been declared null and void: she would only have obtained a separation, and so would have been unable to marry again while he lived.

No doubt the artificial impediments to marriage could be surmounted by dispensations; but whatever the case may be now, in pre-Reformation days dispensations were costly contrivances, hopelessly beyond the reach of the poor, fruitful for the coffers of the Church.

In a Memorial drawn up by or for Archbishop Hamilton (Cardinal Betoun's immediate successor in the See of St Andrews), it is stated that so many people in Scotland were so nearly related that one could hardly find a spouse for a man or a woman of an honourable or noble family

who was not related in some degree of consanguinity; whence it happened that many contracted marriage with their blood relations without obtaining any dispensation, and afterwards sought divorce or repudiated their wives, on the pretext that they had not dispensations and were unable to lift them; and so divorces followed, children became illegitimate, alliances were broken up, dissensions arose, and robberies, quarrels, contentions, and murders occurred. In the words of the Memorial—"As regards spiritual relationship, there is none that does not shudder (*qui non inhorrescit*) when he hears of the great sum which would have to be paid for such a dispensation" (*Liber Officialis Sancti Andree*, pp. 164, 165). If marrying a third cousin or a spiritual relation was so iniquitous that such marriages might be declared null and void, what right had the Church to grant dispensations for money?

"Whence came this knack? or who did it begin?

Did Christ e'er keep a custom-house for sin?"

In the *First Book of Discipline*, in the framing of which, in 1560, Knox took a leading part, it is emphatically affirmed that marriage, "the blessed ordinance of God," hath been so contemned and weakened "in this cursed Papistrie," that the persons conjoined could never be assured of continuance therein, if the bishops and prelates list to dissolve the same. This was a very grave indictment, but it was true. As Bishop Dowden, in his *Medieval Church in Scotland* (1910, pp. 291, 292), has said:—

"A man might be living happily in wedlock for a score of years before some accident revealed to him that his reputed wife was a third cousin, and therefore no real wife in the eye of the Church, and that his children were illegitimate. But the doctrine that affinity up to and including the fourth degree was an impediment to marriage vastly increased the uncertainty whether a marriage was valid or not. According to the Church,

affinity was created equally by illicit intercourse and by marriage. An act of pre-nuptial unchastity, let us suppose, on the part of the man with a woman related to his future wife in the fourth degree of consanguinity invalidated his marriage. It was obviously possible for a man, by keeping the evil secrets of his early life to himself, to contract a marriage which he would be able at any time to get declared null in the consistorial court. Nor was it always the man who took advantage of the ecclesiastical law in this respect."

In the words of Cosmo Innes: "All decency was thrown aside. We have found women, of no mean condition, publishing their own shame, to entitle them to a separation from their husbands" (*Liber Officialis Sancti Andree*, p. xxxvi). James Fergusson, one of the judges in the Consistorial Court of Scotland, declared that "the most iniquitous and pernicious proceedings that ever disgraced the administration of justice for annulling marriages" were admitted in the pre-Reformation ecclesiastical courts (*Reports of some Recent Decisions*, 1817, p. 462). And John Riddell, who had studied the subject in all its bearings, came to the conclusion that "great uncertainty must have prevailed as to the status and condition of individuals; nay, it was strictly impossible to say who were legally married or not" (*Inquiry into the Law and Practice in Scottish Peerages*, i. 466).

It is impossible for even the most bigoted Romanist to gainsay the fact that the absurd prohibitions of intermarriage, even as curtailed in 1215, continued to be the cause of great evils. The fact was thus acknowledged by the Council of Trent, in 1563, in its decree, *Tametsi*, concerning marriage:—

"Experience teaches, that, by reason of the multitude of prohibitions, marriages are oftentimes unwittingly contracted in prohibited cases, in which marriages either the parties continue to live on, not without great sin, or they are

dissolved, not without great scandal" (Waterworth's *Translation of the Canons and Decrees of the Sacred and Œcumenical Council of Trent*, p. 199).

The Council of an infallible Church cannot acknowledge, however, that she has erred, and so of the twelve Tridentine canons concerning marriage, three run thus:—

"If any one saith, that those degrees only of consanguinity and affinity, which are set down in Leviticus, can hinder matrimony from being contracted, and dissolve it when contracted; and that the Church cannot dispense in some of those degrees, or establish that others may hinder and dissolve it; let him be anathema."

"If any one saith, that the Church could not establish impediments dissolving marriage; or that she has erred in establishing them; let him be anathema."

"If any one saith, that matrimonial causes do not belong to ecclesiastical judges; let him be anathema" (Waterworth's *Translation*, pp. 194-196).

Notwithstanding the Council of Trent's admission of the evils flowing from the multitude of prohibitions, it did not abolish any of those relating to consanguinity, or to affinity by previous marriage; but it limited the impediment of affinity arising from fornication to the first and second degree. It removed entirely the impediment of public decorum in cases where the betrothal was not valid, and limited it to the first degree when the betrothal was valid. It also decreed that at baptism one person only, or at most one male and one female, should receive the individual baptised—"between whom and the baptised, and the father and mother thereof; as also between the person baptising and the baptised, and the father and mother of the baptised; and these only; shall spiritual relationship be contracted." It further decreed "that relationship, in like manner, which is contracted by confirmation shall not pass beyond him who confirms, the person confirmed, his father and mother,

and him who places his hand on him; all impediments arising from this kind of spiritual relationship between other persons being utterly set aside." These prohibitions of intermarriage have not yet been further modified.

Marriages celebrated without the presence of the parish priest and witnesses are known in the Church of Rome as clandestine marriages. The Council of Trent declared such marriages, made with the free consent of the contracting parties, "valid and true marriages, so long as the Church has not rendered them invalid," and condemned with anathema those who deny this; but in the same decree, *Tametsi*, it ordained that henceforth a marriage was to be null and void that was not made "in the presence of the parish priest, or of some other priest by permission of the said parish priest, or of the ordinary, and in the presence of two or three witnesses." This decree bears that it was only to come into force in any parish thirty days after its first publication in that parish. In *The Catholic Encyclopedia* (ix. 698, 699), bearing the imprimatur of the Archbishop of New York, it is confessed that—

"The Church did not find it possible, however, to insist on the rigour of this legislation in all countries owing to strong Protestant opposition. Indeed, in many countries, it was not found advisable to promulgate the decrees of the Council of Trent at all, and in such countries the impediments of clandestinity did not obtain. Even in countries where the *Tametsi* decree had been published, serious difficulties arose. As a consequence Pope Benedict XIV., choosing the lesser of two evils, issued a declaration concerning marriages in Holland and Belgium (Nov. 4, 1741) in which he declared mixed unions to be valid, provided they were according to the civil laws, even if the Tridentine prescriptions had not been observed. A similar declaration was made concerning mixed marriages in Ireland by Pope Pius [VI.] in 1785, and gradually the 'Benedictine dispensation' was extended to various localities."

Not only was *Tametsi* debarred by "strong Protestant opposition" from some countries; not only did it encounter serious difficulties in others; but Roman Catholic theologians differed widely in their interpretations of it. In Father O'Kane's *Supplement to Notes on the Rubrics of the Roman Ritual*, (1875, p. 13*), it is stated that:—

"Many questions of great practical importance regarding the interpretation of this decree are discussed by theologians and canonists; and some of them have been decided by the Sacred Congregation of the Council, and even in Papal Constitutions."

To those who believed that the Council of Trent had the right and the power to formulate such a decree, the questions regarding its interpretation were of very great practical importance as they affected the validity of marriage. Where it was not promulgated it did not come into force. Hence such questions as these:—Could the decree be successfully evaded by the parties temporarily quitting a country where it was in force, and getting married in one where it was not? Did it matter whether their intention in going to another country was to evade the decree, or did it not? Was it necessary to acquire a domicile or quasi-domicile in that country before the marriage? How long was residence necessary to acquire a domicile? Was a quasi-domicile acquired at once by having an intention of residing in a place for a *tempus notabile*, and sufficiently manifesting that intention? What constitutes a *tempus notabile*? Might the parties be married before the parish priest of the place to which they had gone without acquiring a domicile, although the authority of their own parish priest had not been obtained? On the other hand, if the parties belonged to a place where the decree was not in force, but happened to be married in a place where it was in force, was their marriage invalid if a priest were not present? And, in such a case, who was "the parish priest" specified in the decree? Was he the parish priest of either of the parties, or the

priest of the parish in which the marriage took place? Might a priest, who was not a parish priest, validly assist (or act) at a marriage, on the ground of a general permission or appointment to administer sacraments in that parish? Queries on some of these points were submitted to the Sacred Congregation by the Archbishop of Cologne; and its Responses were confirmed by Urban VIII. in 1627, and fully a century later by Benedict XIV. in the constitution *Paucis*. Thus the Responses became of undeniable authority and precluded all further discussion on the points which they settled; but neither the Responses nor *Paucis* touched all the disputed points, and on some of those which they did touch their full meaning was not entirely clear; and so room was still left for the theologians to hold different opinions. The mystery of iniquity embodies many iniquities as well as many mysteries, otherwise it would be surprising to find a Church, which claims to have an infallible earthly head, allowing its clergy to remain so long in doubt on such "questions of great practical importance." The *pros* and *cons* and contradictory opinions, regarding the questions briefly indicated in this paragraph, crowd thirty pages of the *Supplement to the Notes on the Rubrics*; and these are by no means the only questions concerning the celebration of marriage which have perplexed the Pope's followers. Apparently they are not even agreed as to the precise nature of the Responses confirmed by Urban VIII. and Benedict XIV., for it is affirmed that "some theologians and canonists of great authority" do not regard them as "a mere interpretation of the law of the Council of Trent, but as a new enactment established by the Supreme Pontiffs for the purpose of preventing the law of Trent from being evaded."

As the decree *Tametsi* was never promulgated in Scotland or in England, or indeed in Protestant countries generally, clandestinity did not in them nullify the marriage of Roman Catholics in the eyes of the supreme pontiff or of

his obsequious sheep. And so, more than three centuries after the close of the Council of Trent, the *Catholic Dictionary* (1884, p. 436), bearing the imprimatur of Cardinal Manning, pointed out that "the marriages of Protestants or Catholics made before the Protestant clergyman or magistrate, or without any functionary, in these countries, are valid." Now, however, this has been changed by the new decree, *Ne Temere*, which came into operation on the 19th of April 1908. It declares that "only those marriages are valid which are contracted before the parish priest, or the ordinary of the place, or a priest delegated by either of these, and at least two witnesses." The only exceptions to this rule are (1) that when danger of death is imminent, and where the parish priest, the ordinary, or a priest delegated by either of them, cannot be had, any priest can officiate, for the relief of conscience or the legitimization of offspring; and (2) that, if, for a month, in any district, the parish priest, the ordinary, or a priest delegated by either of them, cannot be had, a formal declaration of consent by the parties in presence of two witnesses will suffice.

Unlike *Tametsi*, *Ne Temere* does not require to be published in each parish in order to have force. It is "to be held as legitimately published and promulgated by its transmission to the ordinaries," that is, the diocesan bishops; and it professes to be "binding on all persons baptised in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church), in all cases of betrothal or marriage," and "also on such Catholics, if they contract betrothal or marriage with non-Catholics, baptised or unbaptised, even after a dispensation has been obtained from the impediment *mixtae religionis*, or *disparitatis cultus*; unless the Holy See have decreed otherwise for some particular place or region." Just before this new law came into force, Father Slater, a Jesuit, explained that it "binds all Catholics belonging to the Western Church, even when only

one of the parties is a Catholic, except in the German Empire." Concerning those outside Germany, he added:—

"Henceforth, therefore, marriages before the registrar, or in non-Catholic places of worship, without the presence of the priest of the district, will not only be unlawful and sinful as heretofore, but also null and void before God, the Church, and in conscience" (*The Month*, April 1908, pp. 340, 341).

Surely it is blasphemous presumption in any Church to say that marriages are null and void before God, which it solemnly declared in 1563 to be valid and true, which it has since continued to recognise as such in Protestant countries, and still continues to recognise in some lands. Is the will of the Almighty in the hands of a sinful old man in the Vatican? Are His eternal laws of truth and justice subject to the local limits which that old man chooses to set for them? Who is this old man who dares to speak thus for God and conscience? Some may be ready to say—"That man of sin, . . . the son of perdition, who opposeth and exalteth himself above all that is called God, or that is worshipped: so that he as God sitteth in the temple of God, showing himself that he is God."

Most genuine Protestants disapprove of mixed marriages; but that is no reason why they should sit calmly by, and see injustice done to those who have been foolish enough to enter into such unions. The Roman Catholic Bishop of Galloway thus exhorted his flock in the south-west of Scotland two years ago:—

"It has now again been declared solemnly, by the highest authority, that no Catholic can contract a valid marriage outside the Catholic Church; any such sacrilegious attempt is held to be an act of foul concubinage; therefore your public duty to God and to your own religious sense demands that you should unreservedly shun all association and converse of any one who should unhappily fall into such abomination. Let them feel that they are utterly unwelcome and

unfit to hold intercourse with you until they repent and amend by putting away the evil thing" (*Pastoral Letter*, Lent 1909, p. 4).

Protestants may well resent the Pope's claim, set forth in *Ne Temere*, to control those who have at any time been in the communion of the Church of Rome and left it. With fiend-like pertinacity, that Church refuses to relinquish its hold of any who have ever been in its fold whether as unconscious lambs or as stray sheep.

Some have proffered the advice that, when a mixed marriage has been celebrated by a Protestant minister, the Protestant spouse should, for the sake of peace, agree to be married anew according to the form of the Roman Catholic Church in the presence of a priest. Not to speak of the slur on the morality of the couple which this might involve if an interval had elapsed, why should Protestants hold their principles more loosely than Roman Catholics are counselled to do? If one serious mistake be made, that is no reason why it should be aggravated by another. Marrying an idolater is no justification for bowing in the house of Rimmon. The following quotation is from *The Catholic Encyclopedia* (ix. 699):—

“As to a mixed marriage contracted before a non-Catholic minister, Pope Pius IX. issued an instruction, 17 Feb., 1864. He declared that, in places where the heretical preacher occupied the position of a civil magistrate, and the laws of the country required marriages to be entered into before him in order that certain legal effects may follow, it is permitted to the Catholic party to appear before him, either before or after the marriage has taken place in presence of the parish priest. If, however, the heretical minister is held to be discharging a religious duty in such witnessing of a marriage, then it is unlawful for a Catholic to renew consent before him as this would be a communion in sacred things and an implicit yielding to heresy. Parish priests are also reminded that it is their strict duty to tell Catholics, who ask for information, that such going before a minister in a religious

capacity is unlawful, and that they thereby subject themselves to ecclesiastical censure. Where, however, the priest is not asked, and he has reason to fear that his admonitions will prove unavailing, he may keep his peace provided there be no scandal and the other conditions required by the Church be fulfilled. When a Catholic party has gone before an heretical minister before coming to the parish priest, the latter cannot be present at the marriage until full reparation has been made. For the issuing of a dispensation for a mixed marriage, the Church requires three conditions: that the Catholic party be allowed free exercise of religion, that all the offspring are to be brought up Catholics, and that the Catholic party promise to do all that is possible to convert the non-Catholic. It is not to be supposed, however, that, even when these precautions have been taken, this is all that suffices for the issuance of a dispensation."

Some of these points are put even more plainly, as well as more fully, by the Rev. Arthur Devine, Passionist, in his volume entitled, *The Law of Christian Marriage according to the teaching and discipline of the Catholic Church*, bearing the imprimatur of "Gulielmus, Episcopus Arindelensis, Vicarius Generalis," 20 Jan. 1908. The second edition was published in 1909. He says:—

"A mixed marriage, understood in a general sense, may signify a marriage between a Catholic and a non-Catholic, whether baptized or unbaptized. In a strict sense it signifies a marriage between a Catholic and a baptized non-Catholic—that is, with a heretic or schismatic. The impediment which prohibits a mixed marriage in this latter sense is called *impedimentum mixtæ religionis*, to distinguish it from the impediment of *disparity of worship* (*disparitas cultus*), which invalidates marriage between a baptized and non-baptized person. The impediment *mixtæ religionis* renders the marriage unlawful, but not invalid . . . It is unlawful and grievously sinful for a Catholic to contract a mixed marriage without the dispensation of the Church" (pp. 149, 150).

"The Sacred Congregation of Propaganda in the year 1858 and again in 1868, in its instructions to the archbishops and bishops of the Church, reminded them that the Church has always reprobated mixed marriages; and that, 'if the more recent constitutions of the Sovereign Pontiffs relax the severity of the canons in some degree, so that mixed marriages may occasionally be allowed, this is only done for the gravest reasons, and very reluctantly, and not without the express condition of requiring beforehand those proper and indispensable pledges which have their foundation in the natural and Divine law'" (p. 152).

In discoursing on how a mixed marriage becomes lawful with a dispensation, and on the conditions under which such a dispensation is granted, Father Devine says:—

"Mixed marriages are not sinful and wrong in themselves, and the impediment is neither one of the natural nor of the Divine positive law. It may not be easy to explain to a non-Catholic who might put the question: Why, if mixed marriages are bad, how can the dispensation justify them? . . ."

"Besides the grave reasons which are required for matrimonial dispensations in general, and which are stated explicitly by canonists and theologians and acknowledged by the Church, and which all must therefore regard as sufficient reason for dispensation, there are certain specific conditions always required in cases of mixed marriage before the dispensation will be granted. There are promises to be made and signed by the contracting parties.

"They are:—

"1. That all the children born of the marriage shall be baptized and brought up in the Catholic faith.

"2. That the Catholic party shall have full liberty for the practice of the Catholic religion.

"3. That no religious marriage ceremony shall take place elsewhere than in the Catholic Church.

"4. A verbal promise is usually required from the Catholic, that he or she will endeavour by all possible means, and especially by good example, to bring the non-Catholic into the true Church.

"Form to be signed by the Catholic Party.

"I, the undersigned, do hereby promise and engage that all the children, of both sexes, who may be born of my marriage shall be baptized in the Catholic Church, and shall be carefully brought up in the knowledge and practice of the Catholic religion; and I also promise that (according to the instruction of the Holy See) my marriage in the Catholic Church shall not be preceded nor followed by any other religious marriage ceremony."

"(Signature.)"

"Form to be signed by the Non-Catholic Party.

"I, the undersigned, do hereby solemnly promise and engage that I will not interfere with the religious belief of N., my future (wife or husband), nor with (her or his) full and perfect liberty to fulfil all (her or his) duties as a Catholic; that I will allow all the children, of both sexes, who may be born of our marriage to be baptized in the Catholic Church, and to be carefully brought up in the knowledge and practice of the Catholic religion."

"(Signature.)"

"The first of the above conditions is necessary because children who are not brought up in the Catholic faith are brought up out of the one revealed way of salvation. No Catholic can in conscience enter upon marriage without having the fullest guarantees on the subject; nor can a Catholic submit to an arrangement that the Protestant husband will have the boys baptized and brought up in his way, or that the Protestant mother will have the girls to follow in her way."

"The second condition is also absolutely necessary, because it is quite evident that it is never lawful for a Catholic wilfully to neglect his or her religious duties, or to renounce the liberty of practising them. This would be directly to renounce the means of the soul's salvation. Hence Catholics about to marry may be advised in the words of St John Chrysostom: 'Whenever you think of marrying, look well to the laws of the Church as well as

to the laws of the country, because it is by the laws of the Church that God will judge you. When you offend the civil laws your punishment is but temporary—perhaps a fine in money—but if you trample upon the laws of the Church, it is your soul that will be punished, and there is the fire that is everlasting.’

“With regard to the third condition, that no religious ceremony shall take place elsewhere than in the Catholic Church, we are taught: (1) That when the state recognises no marriage as valid, which is not celebrated before a Protestant or non-Catholic minister, and when such a minister may in this respect be regarded as a *civil functionary*, Catholics may lawfully go through a form of marriage in his presence for the purpose of securing their civil rights, and of having their offspring acknowledged as legitimate in the eyes of the law. (2) That when no such necessity or requirement of the civil law exists (and since the year 1837 it has been abrogated in England), the marriage of a Catholic before a Protestant minister is a grave sin, as being a participation in the religious rites of those who are separated from the Catholic Church, and therefore a sacrilege. As it is an implicit adhesion to heresy, and a participation with heretics in their religious rites, the penalty of excommunication is attached to this sin” (pp. 154-158).

All this is surely humiliating enough for the Protestant party; but by *Ne Temere*, even although a dispensation has been obtained, the marriage is null and void if it does not take place before a priest. Should the Protestant party be spiritless enough to be married before a priest, and although a dispensation has been granted, the ceremony is shorn of its pomp. Indeed, according to an allocution of Cardinal Vaughan in 1898:—

“The ordinary law of the Church is that, when for just reasons a dispensation has been granted, the mixed marriage is to be shorn of all religious ceremony, that it is to take place outside the church, and that the priest assisting at it is not to be vested for the occasion.”

A mitigation of the practise having been granted for England, the Cardinal, being anxious "as far as possible to avoid causing unnecessary pain or humiliation," graciously promulgated the following rules for the diocese of Westminster:—

"1. A mixed marriage is never to be celebrated by a bishop.

"2. The priest assisting is to be vested in cotta and stole, but not in cope.

"3. A suitable sermon or exhortation may be delivered on the occasion, before or after the sacred rite.

"4. There are to be no lights on the altar, nor floral decorations within the sanctuary.

"5. The contracting parties are not to enter the sanctuary, but are to kneel or stand outside the rails.

"6. The nuptial mass and the nuptial blessing are to be omitted.

"7. The service is not to be introduced or accompanied by either vocal or instrumental music.

"8. When the marriage service has been concluded, the organ may be played as the parties are leaving the church" (*Ibid.* pp. 160, 161).

Father Devine candidly points out that:—

"The present decree [*Ne Temere*] affects only the form of celebrating marriage, and it does not change or modify the other matrimonial impediments. As the Church has not exempted heretics from any of the other diriment impediments of the Ecclesiastical Law, they are subject to them by virtue of their baptism, in the supposition that they have been validly baptised, and come under the technical signification of the word 'heretic'" (*Ibid.* p. 333).

And so a Protestant, who has been validly baptised, and has married his third cousin, or the third cousin of a former wife, is not married at all, but is living in concubinage, and the children are illegitimate! This arrogant claim of jurisdiction over Protestants who have

been validly baptised is thus indorsed by John T. McNicholas, O.P., S.T.Lr., in his pamphlet, *The New Legislation on Engagements and Marriage*, bearing the imprimatur of the Archbishop of Philadelphia:—

“Many Protestants may think the Church presumptuous in decreeing their marriages valid or invalid accordingly as they have or have not complied with certain conditions. As the Church cannot err, neither can she be presumptuous. She alone is judge of the extent of her power. Any one validly baptized, either in the Church or among heretics, becomes thereby a subject of the Roman Catholic Church.”

For Father Hunter's opinion as to what constitutes baptism, see *infra*, p. 24.

Perhaps Protestants are expected to be grateful for the wondrous condescension of *Ne Temere*:—“Non-Catholics, whether baptised or unbaptised, who contract among themselves are nowhere bound to observe the Catholic form of betrothal or marriage.” Not “bound”! as if the Pope could have bound them had he chosen. It may be noted that, in this decree, such marriages are not characterised as valid; but, on the other hand, in the bull *Provida*, of 18th January 1906, mixed marriages, made in the German empire, without the Tridentine form, are not only recognised as valid, but marriages of “non-Catholics, whether heretics or schismatics,” are also recognised as valid. And, notwithstanding *Ne Temere*, the Sacred Congregation of the Council declared, in February 1908, that these dispensations for the German empire will still remain in force. For mixed marriages—

“A like dispensation has been granted to Hungarians marrying within the boundaries of Hungary; and according to the Secretary of the S[acred] Congregation of Sacraments (18 March, 1909), Croatsians, Slavonians, inhabitants of Transylvania and of Fiume, enjoy a similar dispensation” (*Catholic Encyclopedia*, ix. 701).

But no such relaxation is extended to Great Britain, the land of the brave and the free.

The Council of Trent pronounced anathema on those who said that marriage was not truly and properly one of the seven sacraments instituted by Christ, "and that it does not confer grace." Nevertheless its clergy are denied the benefits of this grace-conferring sacrament. They are perhaps supposed to find compensation in their exclusive use of the eucharistic wine! The great majority of medieval theologians held that wherever baptised persons contracted marriage they necessarily received the sacrament of marriage also. By this theory the ministers of the sacrament of marriage are the parties themselves, not the officiating priest. Melchior Canus, a sixteenth-century Dominican theologian, held on the contrary that, although a marriage without a priest was valid, it was not a sacrament. "Theologians and scholars of the greatest learning and highest reputation . . . embraced this opinion" (*Catholic Dictionary*, p. 547). The Council of Trent, however, neither defined wherein the sacrament of marriage lay, nor by whom it was ministered; and so these questions remained open questions in the Latin Church. Benedict XIV. had regarded the view of Canus as exceedingly probable; but, "in his capacity as Pope, he taught the opposite clearly and distinctly in his letter to the Archbishop of Goa" (*Catholic Encyclopedia*, ix. 711).

It has been pointed out that "the solemn nuptial benediction which is given in the Church at mass must be carefully distinguished from the marriage ceremony properly so called. It usually follows it immediately, but not always" (*Supplement to Notes on the Rubrics*, p. 50*). As the Council of Trent exhorted the married couple "not to live together in the same house until they have received the sacerdotal benediction (*ante benedictionem sacerdotalem*)," was it this solemn nuptial benediction which constituted the sacrament of marriage in the eyes of those who believed

that the priest was the minister of that sacrament? Or was it conferred in the most important of the priest's words in the marriage ceremony properly so called, words sanctioned in *Tametsi*—"Ego vos in matrimonium conjungo in nomine Patris, et Filii, et Spiritus Sancti"? But, as the *Catholic Encyclopedia* (ix. 707) confesses, although these words "are apt to convey the false impression that the priest is the minister of the sacrament," they "are not primitive, at any rate in this form, and are only to be found in Rituals of comparatively recent date." And O'Kane (*Supplement*, p. 61*) explains that, as the form "was quite unknown in the early Church," "it is inferred with great probability that these words do not constitute the form of the sacrament." Now it is known that it is neither by these words, nor by the solemn nuptial benediction, for it has been settled that the priest is not the minister of the sacrament; and consequently that the impression conveyed by the form sanctioned in *Tametsi* is a "false impression." It is instructive to note how and why the opinion of Canus came to be condemned.

"To-day it must be rejected by all Catholic theologians and branded at least as false. The inferences not contemplated by the originators of this opinion, but deduced later and used in practice against the rights of the Church, constrained succeeding Popes repeatedly to condemn it formally. Subservient Catholics and court theologians especially found it useful as warranting the secular power in making laws concerning validity and invalidity, diriment impediments, and the like. For, if the sacrament consisted in the priestly blessing, and the contract [consisted], as was never doubted, in the mutual consent of the parties, evidently then contract and sacrament must be separated; the former had to precede as a foundation; upon it, as matter, was founded the sacrament, which took place through the blessing of the priest. . . . In the middle of the last century Nepomuk Nuytz, Professor at the University of Turin, defended this opinion with renewed vigour in

order to supply a juridical basis for civil legislation regarding marriage. Nuytz's work was thereupon expressly condemned by Pius IX., in the Apostolical Letter of 22 Aug., 1851, in which the Pope declared as false especially the following propositions: The sacrament of marriage is only something which is added to the contract of marriage and which can be separated from it; the sacrament consists only in the blessing of the marriage. These propositions are included in the 'Syllabus' of 8 December, 1864, and must be rejected by all Catholics. In like manner, Leo XIII. expresses himself in the Encyclical 'Arcanum' . . . He says: 'It is certain that in Christian marriage the contract is inseparable from the sacrament; and that, for this reason, the contract cannot be true and legitimate without being a sacrament as well. For Christ our Lord added to marriage the dignity of a sacrament; but marriage is the contract itself, whenever that contract is lawfully made . . . Hence it is clear that among Christians every true marriage is, in itself and by itself, a sacrament; and that nothing can be farther from the truth than to say that the sacrament is a certain added ornament, or external adjunct, which can be separated and torn away from the contract at the caprice of man'" (*Catholic Encyclopedia*, ix. 711, 712).

Therefore, it is now held as certain, in the Church of Rome, that marriage as a sacrament is fulfilled only through the mutual consent of the contracting parties. The matter is thus expounded by Sylvester Joseph Hunter, S.J., in his *Outlines of Dogmatic Theology*, bearing the imprimatur of Cardinal Vaughan, (second edition, iii. 407):—

"It is held by all that the parties themselves are the ministers of the sacrament; there is no other way of explaining why, when a husband and wife pass from Protestantism to the Church they are not re-married; they are treated as having already received the sacrament, which no one administered to them but themselves. If it be objected that most Protestants do not regard matrimony as a sacrament, and therefore cannot have the intention of administering it, the reply is the same as may be made in

the case of baptism, which may certainly be administered by one who denies the sacramental character of the rite. It is sufficient if the intention is to perform the Christian ceremony of initiation or to enter into Christian marriage."

From this it logically follows that a marriage between a Protestant and a Roman Catholic, though not celebrated with Romish rites, is a sacrament. Moreover, it is now explained that certain expressions of the fathers, and such statements in papal letters as that marriage without the priest is unholy, wicked, or sacrilegious, and does not bring the grace of God, but provokes His wrath, give little support to the view of Canus, inasmuch as they do not deny the sacramental character of marriage so contracted, but "condemn as sacrilegious that reception of the sacrament which indeed lays open the source of grace, yet places an obstacle in the way of the sacrament's efficacy." If that be so, one can understand why the Church of Rome should discourage clandestine marriages; but not why she should declare them null and void before God, the Church, and in conscience.

According to the *Shorter Catechism*, "sin is any want of conformity unto or transgression of the law of God." This definition is clear, simple and comprehensive. It is not comprehensive enough, however, to cover all that is reckoned sin in the Church of Rome. For example, it has been decided that the parish priest, whose presence *Tametsi* requires at a marriage, may be the parish priest of either of the parties, no matter in what parish it takes place. Nevertheless, it is held to be "a grievous sin" for that properly qualified officiating priest to give "the solemn nuptial benediction" without the consent of the parish priest of the parish in which the marriage is celebrated. Again, *Tametsi* enjoins that the banns shall be announced publicly in the Church on three continuous festival days; and so a priest who fails to comply with this rule, "unless he has obtained a dispensation, is guilty of grievous sin, though the omission

does not invalidate the marriage." Some maintained that the banns might be published on any day or in any place, where there was a sufficient concourse of people, and St. Liguori was of opinion that "this might be done without grievous sin."

The Church of Rome teaches, and alleges that she has always taught, that death alone can dissolve a consummated Christian marriage; and yet she has not only connived at divorces, but in her courts countless numbers have been granted on the most frivolous technical grounds. While thus exposing the hollowness of her pretended respect for the sanctity of the marriage tie, she has tried to hide her gross inconsistency by the flimsy and transparent device of pronouncing these marriages to have been null and void from the beginning. She has also fouled her hands by unholy matrimonial dispensations.

Her nullifying law of clandestinity, formulated in *Tametsi* and re-asserted not less offensively in *Ne Temere*, is with her a matter not of spiritual independence, but of spiritual supremacy and spiritual tyranny. Had it been spiritual independence, and had she been conscientious, she would have published and pressed that law at all hazards; whereas, for almost three-and-a-half centuries she allowed it to remain as dormant as though it had been dead to untold numbers of her own adherents; and even now, where that suits her policy, she lies low, and meekly grants exemptions to those whom she cannot successfully resist and dare not insult. Consistency, however, has never been a prominent virtue of that Church which has exalted one godly married woman as if she had been a goddess, while for the others—in *The Catechism of the Holy Council of Trent* (Donovan's translation, printed at the Propaganda-Press, Rome, 1839, p. 334)—she has furnished this humble role: "Unless compelled by necessity to go abroad, they should willingly remain at home; and should never venture to leave their house without the permission of their husbands."

APPENDIX

THE *NE TEMERE* DECREE

Decree of the Congregation of the Council.

THE Council of Trent (*Cap. I, Sess. XXIV, de reform. matrim.*) made prudent provision against the rash celebration of secret marriages—which the Church of God has always deprecated and forbidden—when it decreed that “those who attempt to contract marriage otherwise than in the presence of their parish priest or of another priest acting with the license of the parish priest or of the Ordinary, and in the presence of two or three witnesses, become thereby incapable of marrying validly, since the Council declares that all such contracts are null and void.”

As the Sacred Council prescribed, however, that the above decree should be published in every parish, and was to have force only in those places in which it should be promulgated, it has happened that many places in which the publication has not been made have been deprived of the benefit of the Tridentine law, and, being still without it, they continue to be subject to the doubts and inconveniences of the old discipline.

Nor did all difficulty cease in those places where the new law has been in force. For often there have arisen grave doubts in deciding who is to be regarded as the parish priest before whom a marriage must be celebrated. The canonical discipline did indeed decide that he is the parish priest in whose parish one or other of the contracting parties has his or her domicile or quasi-domicile. But as it is sometimes difficult to say whether a quasi-domicile really exists in a given case, many marriages are exposed to the danger of nullity; whilst many others, through ignorance or fraud, were rendered quite illegitimate and void.

These deplorable results have occurred more frequently in our own time on account of the greater facility and celerity of communication between different countries, no matter how widely separated they may be. Hence, in the judgment of wise and learned men it has been deemed expedient to introduce some change into the law, regulating the form of celebrating marriage, and many bishops in all parts of the world, but especially in the more populous centres where the need of such legislation urges with greater force, have petitioned the Holy See to this end.

It has been requested, also, by many bishops in Europe, as well as by others in various regions, that provision be made to prevent the inconveniences arising from betrothals, that is, mutual promises of marriage, when privately made. For experience has sufficiently shown the many dangers of such espousals, in that they are an incitement to sin and the cause of misleading inexperienced girls, besides involving subsequent dissensions and endless disputes.

These circumstances have induced the Holy Father, Pope

Pius X, in his solicitude for all the churches, to advise some modifications with the object of removing the above-mentioned difficulties and dangers. Accordingly he committed to the S. Congregation of the Council the task of examining into the matter and of suggesting such measures as it might deem opportune.

He was pleased, also, to ascertain the opinion of the Commission which has been appointed for the codification of Canon Law, as well as of the Cardinals chosen on this special Commission to prepare the new code. These and the S. Congregation of the Council have held for this purpose frequent consultations. Finally, having obtained the reports of these bodies, His Holiness ordered the Sacred Congregation of the Council to issue a decree embodying the new laws, approved by himself on sure knowledge and after mature deliberation, by which the discipline in respect of engagements and marriage is to be regulated for the future, so that the celebration of them may be carried out in a secure and orderly manner.

Pursuant, therefore, to the Apostolic mandate the S. Congregation of the Council hereby ordains and decrees:

Engagement or Betrothal.

I. Only those matrimonial engagements are considered to be valid and to beget canonical effects which have been made in writing, signed by both the parties, and by either the parish priest or the Ordinary of the place, or at least by two witnesses.

In case one or both of the parties be unable to write, this fact is to be noted in the document, and another witness is to be secured to sign the contract as above, together with the parish priest or the Ordinary of the place, or the two witnesses.

II. By parish priest, as used in the present decree, is to be understood not only the priest who legitimately presides over a parish that is canonically erected, but also, in localities where parishes are not canonically erected, the priest to whom the care of souls has been legitimately entrusted in any specified district, and who is equivalent to a parish priest; and also, in missions where the territory has not yet been perfectly divided, every priest generally deputed for the care of souls in any station by the superior of the mission.

Marriage.

III. Only those marriages are valid which are contracted before the parish priest, or the Ordinary of the place, or a priest delegated by either of these, and at least two witnesses, in accordance with the rules laid down in the following articles, and with the exceptions mentioned under VII. and VIII.

IV. The parish priest and the Ordinary of the place validly assist at a marriage:

(i) from the day on which they have taken possession of their benefice or entered upon their office, unless they have been by a public decree excommunicated by name or suspended from the office;

(ii) but only within the limits of their territory. And in this territory they assist validly at marriages not only of their own subjects, but also of outsiders;

(iii) provided, when invited and requested, and not compelled by violence or grave fear, they ask and receive the consent of the contracting parties.

V. They assist licitly:

(i) after they have ascertained, according to the prescribed forms, that the contracting parties are free to marry, and that they have duly complied with the conditions laid down by the law;

(ii) after they have ascertained, moreover, that one of the contracting parties has a domicile, or at least has lived for a month in the place where the marriage takes place;

(iii) if this condition be lacking, the parish priest and the Ordinary of the place, to assist licitly at a marriage, require the permission of the parish priest or the Ordinary of one of the contracting parties, unless it be a case of grave necessity, which excuses from this requirement.

(iv) Except in cases of necessity, it is unlawful for a parish priest to assist at the marriage of persons without fixed abode (*vagos*) until the matter has been duly reported to the Ordinary or to a priest delegated by him, so as to obtain permission to assist at the marriage.

(v) In every case let it be held as the rule that the marriage is to be celebrated before the parish priest of the bride, unless some just cause dispenses from this rule.

VI. The parish priest and the Ordinary of the place may grant permission to another priest, specified and certain, to assist at marriages within the limits of their district.

The delegated priest, in order to assist validly and licitly, is bound to observe the limits of his mandate and the rules laid down above, in IV and V, for the parish priest and the Ordinary of the place.

VII. When danger of death is imminent, and where the parish priest, or the Ordinary of the place, or a priest delegated by either of these, cannot be had, in order to provide for the relief of conscience, and (should the case require it) for the legitimation of the offspring, a marriage may be contracted validly and licitly before any priest and two witnesses.

VIII. Should it happen that in any district the parish priest, or the Ordinary of the place, or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of affairs has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the contracting parties in the presence of two witnesses.

IX. (i) After the celebration of a marriage the parish priest, or he who takes his place, is to register at once in the book of marriages the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details, according to the method prescribed in the ritual books or by the Ordinary. This obligation holds likewise when another priest, delegated either by the parish priest himself or by the Ordinary, has assisted at the marriage.

(ii) Moreover, the parish priest is to note in the book of baptisms the fact that the married person contracted marriage on a certain day in his parish. If the married person was baptised elsewhere, the parish priest who has assisted at the marriage is to send notice of the marriage, either directly or through the episcopal curia, to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the book of baptisms.

(iii) Whenever a marriage is contracted in the manner described under VII and VIII, the priest in the former case, the witnesses in the latter, are bound conjointly with the contracting parties themselves to provide that the marriage be entered as soon as possible in the prescribed registers.

X. Parish priests who violate the rules here laid down are to be punished by their Ordinaries according to the nature and gravity of their transgression. Moreover, if they assist at the marriage of anybody in violation of the rules given under (ii) and (iii) of No. V, they are not to appropriate the stole-fees, but must remit them to the parish priest of the contracting parties.

XI. (i) The above laws are binding on all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church), in all cases of betrothal or marriage.

(ii) The same laws are binding, also, on such Catholics, if they contract betrothal or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment *mixtae religionis* or *disparitatis cultus*; unless the Holy See have decreed otherwise for some particular place or region.

(iii) Non-Catholics, whether baptized or unbaptized, who contract among themselves are nowhere bound to observe the Catholic form of betrothal or marriage.

The present decree is to be held as legitimately published and promulgated by its transmission to the Ordinaries, and its provisions begin to have the force of law from the solemn feast of the Resurrection of our Lord Jesus Christ, next year, 1908.

Meanwhile let all the Ordinaries see that this decree be made public as soon as possible, and explained in the parish churches of their dioceses, so that it may be known by all.

These presents are to have force by the special order of our Most Holy Father Pope Pius X, all things, even those worthy of special mention, to the contrary notwithstanding.

Given at Rome on the second day of August, in the year 1907.

✠ VINCENT, Card. Bishop of Palestrina, *Prefect*.
C. DE LAI, *Secretary*.

The effect of Ne Temere (which is given above in full) is summed up in seven brief paragraphs by the Rev. John^m Charnock, S.J., in a pamphlet entitled "Marriage," published by the Catholic Truth Society. Here are five of these paragraphs:—

"The marriage of all Catholics (both parties Catholics) before a [Protestant] minister or civil magistrate is no marriage at all.

"The marriage of all fallen-away Catholics (who have become Protestants or infidels) before a [Protestant] minister or civil magistrate is no marriage at all.

"The marriage of a Catholic to a non-baptized person is never a real marriage, unless the Church grants a Dispensation.

"The marriage of a Catholic to a Protestant (one never baptized in the Catholic Church) before a [Protestant] minister or civil magistrate is no marriage at all.

"The marriage of a Protestant to a Protestant (provided neither was baptized in the Catholic Church) is valid."

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